Supreme Court, U.S.
FILED
OCT 20 1993
OFFICE OF THE CLERK

No. 93-488

In The

Supreme Court of the United States

October Term, 1993

JAMES E. SMITH,

Petitioner,

v.

MARGARET L. ROULETTE, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeal, Fourth Appellate District, Division One, State Of California

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

INTRODUCTION

Defendant/petitioner James E. Smith ("Smith") challenges the California state courts' interpretation of California statutes as to the subdivision of California real property by a California resident. After losing a protracted battle in the state courts, Smith now attempts to manufacture a "federal issue" for review by this Court, by arguing for the first time here that he was denied due process rights under the federal Constitution. His arguments are not only completely meritless, they are untimely.

As a threshold matter, this Court has no jurisdiction because Smith's purported "federal question" was not raised in or decided by the state courts in this action. Further, the state court judgment rests on well-established and accepted principles of state law based on sound public policy. Smith was afforded every opportunity below to present his case. There are no substantive or procedural due process issues in this case worthy of review by this Court. Plaintiffs/respondents Margaret S. Roulette, S. Scott Emsley, and Robin S. Emsley (the "Roulette Plaintiffs") therefore respectfully request that this Court deny Smith's Petition.

OPINIONS BELOW

Smith has attached as Appendices to his petition to this Court (the "Smith Petition") the state court opinions in this action.[1]

JURISDICTION

This Court has no jurisdiction to review the state court judgment below. Smith is raising the federal "due process" issue for the first time in this Court. He did not plead violation of due process in his answer to the complaint in this action. (Appendix G to Smith Petition.)[2] He did not raise this issue in opposition to the Roulette Plaintiffs' summary judgment motion. The trial court's opinion granting that motion did not mention due process. (Appendix F to Smith Petition.) Nor did Smith raise any due process issue in the California Court of Appeal, either on his original appeal or in his petition for rehearing, or in the California Supreme Court.[3] (*See* Appendix E

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[1] The same subdivision issue is raised in Smith's Petition for Writ of Certiorari in Case No. 93-359, where a different trial court hearing Smith's separate mandamus action against the City of Del Mar reached the same result as the trial court in this action.

[2] A defendant's failure to plead any ground alleged in avoidance of the complaint precludes admission of evidence as to that ground at trial. Cal. Civ. Proc. Code § 431.030(b); *Carranza v. Noroian*, 240 Cal. App. 2d 481, 49 Cal. Rptr. 629 (1966). Smith never sought relief from that waiver.

[3] Smith did present an issue at the appellate level regarding "separation of powers," but his sole authority was the California Business and Professions Code. (*See, e.g.*, Appendix E-15 through E-18 and Appendix B-2 to Smith Petition.)

to Smith Petition.) Therefore, neither of those courts' opinions mention due process. (Appendices A and B-27 through B-44 to Smith Petition.)

Not only did Smith fail to preserve any "due process" claim in the lower courts, there are independent and adequate state grounds which support the judgment against him. For both of those reasons, this Court has no jurisdiction over this case (as more fully addressed below).

STATEMENT OF THE CASE

Smith owns certain real property in the City of Del Mar, California (the "City"), which was subdivided pursuant to a recorded map showing individual lots and a network of streets and alleys running through the subdivision. Smith sold three of these lots to the Roulette Plaintiffs (the "Lots") by deeds which specifically excluded from the conveyances the streets and alleys adjoining those Lots. When the City refused to allow development of the Lots as illegally subdivided, the Roulette Plaintiffs sued Smith for rescission. The trial court granted them summary judgment.

The Court of Appeal affirmed. The California Subdivision Map Act provides that a property owner may not convey less than an entire lot without prior governmental approval. Cal. Gov't Code §§ 66426, 66428. In order to decide whether Smith conveyed entire lots to the Roulette Plaintiffs, the Court of Appeal was required to determine the boundaries of those lots prior to the sale. To do so, the Court considered the subdivision map of the property

and the prior deeds, and applied the presumption of California Civil Code Sections 831 and 1121 that ownership of property bounded by a street includes ownership to the middle of adjacent roadways unless the contrary is shown.

The Court of Appeal found that Smith, despite his over 100 exhibits and extensive briefing and oral argument before the trial court, had not presented any evidence to rebut the statutory presumption. The lots conveyed to Smith by his predecessor therefore included the adjoining roadways by operation of law, and Smith's exclusion of these roadways from the deeds to the Roulette Plaintiffs, without first obtaining governmental approval, violated the California Subdivision Map Act. (Appendix B to Smith Petition, pp. 36-38.) Based on these findings, the Court of Appeal affirmed. (*Id.* p. 42.) Smith's petition for rehearing was denied. His petition for review to the California Supreme Court was also denied. (Appendix A to Smith Petition.)

The Smith Petition incorrectly states that there has been a "taking" of Smith's property, and that his "real property [was] ordered to be given to Respondents." (Smith Petition p. 6.) To the contrary, the state courts merely held that if Smith wanted to re-subdivide the property by moving around the lot lines (i.e., taking roadway portions from one lot and adding them to another), he was required by the Subdivision Map Act to obtain *prior* governmental approval, *as well as* express his intention to do so in the deeds. The trial court did not order Smith to give any property to the Roulette Plaintiffs. Instead, they were awarded rescission of the property sale and money damages against Smith.

REASONS WHY THE PETITION SHOULD BE DENIED

I. THIS COURT LACKS JURISDICTION OVER THIS CASE

A. THE PURPORTED FEDERAL ISSUE NOW RAISED BY SMITH WAS NEVER RAISED IN OR DECIDED BY THE STATE COURTS

This Court has repeatedly held that a federal question cannot be raised for the first time in this Court.

> In reviewing the judgments of state courts under the jurisdictional grant of 28 U.S.C. § 1257, the Court has, with very rare exceptions, refused to consider petitioners' claims that were not raised or addressed below.

Yee v. City of Escondido, ___ U.S. ___, 112 S. Ct. 1522, 1531, 118 L. Ed. 2d 153 (1992).

As this Court held in *Board of Directors of Rotary Internat'l v. Rotary Club of Duarte*, 481 U.S. 537, 550 (1987):

> When " ' "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." ' " . . . [citations omitted]

In the present action, none of the state court decisions addresses the due process issue. It is therefore assumed that the issue was not properly raised below. Smith in his Petition has not even attempted to show

otherwise.[4] In fact, he cannot. There is no reason to make a rare exception here. This Court has no jurisdiction over and should decline review of this case.

B. THIS COURT ALSO LACKS JURISDICTION BECAUSE THE STATE COURT JUDGMENT IN THIS CASE WAS BASED ON INDEPENDENT AND ADEQUATE STATE GROUNDS

The present case deals solely with state law. Where this Court concludes that the state ground for a state court judgment is both independent and adequate to support that judgment, "this court will not assume jurisdiction of the case," (*Klinger v. Missouri*, 80 U.S. 257 (1872)), inasmuch as "our jurisdiction fails" (*Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935)).

Smith quarrels with the California Court of Appeal's application of California Civil Code Sections 831 and 1112 to this case. That application is consistent with a long line of California authority applying those sections to determine the boundaries of lots bordered by roadways, particularly in plotted subdivisions. *See, e.g., Anderson v. Citizens Sav. & Trust Co.*, 185 Cal. 386, 197 P. 113 (1921); *Baker v. Ramirez*, 190 Cal. App. 3d 1123, 1132, 235 Cal. Rptr. 857 (1987); *Safwenberg v. Marquez*, 50 Cal. App. 3d 301, 308, 123 Cal. Rptr. 405 (1975); *Neff v. Ernst*, 48 Cal. 2d

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[4] Smith's petition thus does not (indeed cannot) comply with Rule 21.1(h) of this Court, which requires that a petition for review of a state court judgment demonstrate that the federal question asserted "was timely and properly raised so as to give this Court jurisdiction to review the judgment on writ of certiorari."

628, 635, 311 P.2d 849 (1957). The cases which Smith himself cites, from both California *and* other jurisdictions, recognize and apply this rule. (Smith Petition pp. 10-15.)

This statutory presumption is supported by well-recognized public policies. First, "[t]he law of real property abhors the proliferation of gores and strips under separate ownership. . . . " *Murray v. Title Ins. & Trust Co.*, 250 Cal. App. 2d 248, 254, 58 Cal. Rptr. 273 (1967). See also *Safwenberg*, 50 Cal. App. 3d at 306 ("[t]he policy behind the law is to avoid ownership in land in strips and gores"). Several other policy considerations are served, as well:

> [T]here is no object in the grantor's retaining a narrow strip of land which is of little or no use or value to him when separated from the adjoining land [citation]; that the value of the land to a purchaser would be greatly affected if the abutting street were not included in the conveyance [citation]; that such a rule will guard against litigation and disputes between owners of land adjacent to public highways [citation]; that retention of such a narrow strip of land would retard the improvement and further alienation of the adjoining property [citation]; and that "if no other reason could be assigned of this rule . . . the general understanding of the people, and the extensive and immemorial practice of claiming and acquiescing in such rights, ought to have great weight."

Hixson v. Jones, 253 Cal. App. 2d 860, 865, 61 Cal. Rptr. 883 (1967) (quoting *Los Angeles City High School Dist. v. Swensen*, 226 Cal. App. 2d 574, 579-580, 38 Cal. Rptr. 214, 218 (1964) (citations omitted)).

The use of this presumption is not unique to California.

> "The principle *recognized almost everywhere,* either as a general rule of construction or as a rebuttable presumption, is that if land abutting on a highway is conveyed by a description or designation apt or effective to cover it, and the grantor owns the fee to the center of the highway, the grantee takes title to the center line of the highway as part and parcel of the grant, unless an intention to the contrary sufficiently appears [footnotes deleted]. (Emphasis added.)

12 American Jurisprudence 2d *Boundaries* § 38 ("12 Am. Jur.") pp. 577-78 n. 9 (1964 and 1990 Supp.). *See also* 11 C.J.S. *Boundaries* § 35, p. 580 n. 57 (1938 and 1990 Supp.)

This Court itself recognized this common law principle over 125 years ago:

> It is a familiar principle of that law [applicable to dedications of land], that a grant of land bordering on a road or river, carries the title to the centre of the river or road, unless the terms or circumstances of the grant indicate a limitation of its extent by the exterior lines.

Banks v. Ogden, 69 U.S. 57, 68 (1864).

In the present action, the lots in question were part of a larger parcel of property subject to a subdivision map. That map showed certain designated lots with adjacent roadways which were *not* designated as separate or strip lots. These roadways were subsequently vacated. There was no intent shown by Smith's predecessors in title to

separate the roadways from the lots. These facts are similar to the facts in numerous prior cases where the California courts have held that lots in subdivisions include the adjoining roadways. *E.g., Anderson,* 185 Cal. at 393; *Baker,* 190 Cal. App. 3d at 1132; *Safwenberg,* 50 Cal. App. 3d at 308.[5]

Given the facts in this case, the statutory presumption, the public policies against the creation of strip lots and in favor of orderly development, and the prior decisions on similar facts by the state's appellate courts, the California courts properly determined that the lots which Smith could convey to the Roulette Plaintiffs without further governmental approval included the adjoining roadways as a matter of state law. Smith's exclusion of those roadways from his sale of the Lots to the Roulette Plaintiffs *without* such approval constituted an illegal subdivision, also as a matter of state law. Given those independent and more than adequate state grounds for the state court judgment herein, this Court is without jurisdiction to review this case.

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[5] Smith argues that the state courts improperly applied the presumption because his deeds to the Roulette Plaintiffs expressly excepted the roadways. He is considering the wrong time frame. The Subdivision Map Act prohibits an owner from selling less of a parcel than he owns *just prior to the sale being challenged.* Smith cannot rely on his later deeds to the Roulette Plaintiffs to make that determination; those deeds came too late in time. It was in fact those very deeds which effected the improper "splitting" of Smith's property under the Map Act.

II. SMITH'S DUE PROCESS RIGHTS WERE NOT VIOLATED IN THE STATE COURT PROCEEDINGS

A. SMITH'S DUE PROCESS RIGHTS WERE NOT VIOLATED BY APPLICATION OF THE STATE STATUTORY PRESUMPTIONS REGARDING OWNERSHIP OF ROADWAYS TO THIS CASE

Smith tries to create a "federal question" based on the "rational connection" test of *Mobile, Jackson & Kansas City Railroad Company v. Turnipseed, Administrator,* 219 U.S. 35, 43 (1910). *Mobile* recognized the general validity of evidentiary presumptions such as the one involved in the present case.

> Legislation providing that proof of one fact shall constitute prima facie evidence of the main fact in issue is *but to enact a rule of evidence, and quite within the general power of government.* Statutes, National and state, dealing with such methods of proof in both civil and criminal cases abound, and the decisions upholding them are numerous. [citations omitted] (Emphasis added.)
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> . . .
>
> The only legal effect of the inference [in the statutes at issue] is to cast upon the railroad company the duty of producing some evidence to the contrary. When that is done the inference is at an end, and the question of negligence is one for the jury upon all of the evidence. *In default of such evidence, the defendant, in a civil case, must lose, for the* ***prima facie*** *case is enough as matter of law.* (Emphasis added.)

Mobile, 219 U.S. at 42-43.

Like the state statutes in *Mobile*, the California statutes at issue in this case are merely rules of evidence well within the power of California's legislature to enact, and its courts to apply. The presumption of Sections 831 and 1112 simply cast upon Smith the duty to produce evidence to rebut that presumption. When he failed to do so, the Roulette Plaintiffs were entitled to prevail as a matter of law.

Very little is required to pass the "rational connection" test in *Mobile*.

> That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal protection of the law it is only essential that there shall be *some rational connection* between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense to the main fact thus presumed.
>
> If a legislative provision not unreasonable in itself prescribing a rule of evidence, in either criminal or civil cases, does not shut out from the party affected a reasonable opportunity to submit to the jury in his defense all of the facts bearing upon the issue, there is no ground for holding that due process of law has been denied him.

Mobile, 219 U.S. at 43.

In the present action, the presumption that the lots deeded to Smith included the adjoining roadways because there was no contrary intent shown by the original subdivider was not unreasonable or arbitrary. As detailed above, this presumption is based on well-recognized considerations of public policy. Its application to this case furthers not only those policies, but also those behind the Subdivision Map Act, which was designed "to regulate and control the design and improvement of subdivisions." *Pratt v. Adams,* 229 Cal. App. 2d 602, 605, 40 Cal. Rptr. 505 (1964). "[O]rdinarily one who lays out and sells lots in a subdivision intends to part with title to the center of the streets." *Graber v. City of Sacramento,* 2 Cal. 2d 432, 41 P. 2d 543, 545 (1935). There is nothing arbitrary about assuming that a subdivider would not create (or the governmental agency approve) strip lots which would not be owned by the adjacent property owners. Smith was given ample opportunity to present facts to rebut the presumption. He failed to do so.

Smith argues that the presumption cannot be applied at all in a Subdivision Map Act case. However, the California courts have applied this presumption in various types of cases involving boundary issues. *E.g., Taylor v. Continental Southern Corp.,* 104 Cal. App. 2d 425, 233 P. 2d 577, 582 (1951) (action to require defendant to account to plaintiff for her proportionate interest in proceeds under oil and gas lease); *Porter v. City of Los Angeles,* 182 Cal. 515, 189 P. 105, 106 (1920) (trespass action). Smith has not cited any decision of this Court or any federal Court of Appeals holding that the presumption *cannot* be applied

in a case such as the present one.[6] The language of the statutes does not expressly limit their application, nor is there any logical reason not to apply the presumption wherever assistance is needed in determining property boundaries. The state courts' use of the presumption to make that threshold determination in this case was completely reasonable and rational.

In any event, the question of when and how the presumptions should be applied is itself a matter of state law. Smith is simply unhappy with the application of state law to purely state issues. That unhappiness does not create a federal question.

B. THE STATE COURT DECISIONS DID NOT RENDER THE STATE STATUTES AT ISSUE UNCONSTITUTIONALLY VAGUE

Smith also argues in his Petition that the California Subdivision Map Act provisions are unconstitutionally vague as applied by the state courts in this case. He argues first that under Section 66424 of the Map Act the state courts can only consider the county assessor's

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[6] Smith cites one federal district court case, which would neither take precedence over the state courts' pronouncement of state law, nor create a federal "conflict" to be resolved by this Court. (Smith Petition pp. 10, 12) (citing *United States v. 5.324 Acres of Land*, 79 F. Supp. 748 (S.D. Cal. 1948) (incorrectly identified by Smith as a Ninth Circuit Court of Appeals case)). Smith also cites *Speer v. Blasker*, 195 Cal. App. 2d 155, 158, 15 Cal. Rptr. 528 (1961). The Court of Appeal decision in the present case controls over that in *Speer*.

records to determine whether property has been improperly subdivided. Both California's attorney general and the state Court of Appeal in this case have rejected this approach, based on policy and practicalities.

> Reference [in section 66424 of the Subdivision Map Act] to the "latest county assessment roll" provides a simple measure for determining whether title to a particular parcel of property has been transferred from one owner to the next. Such reference was *not* intended to permit the actions of the County Assessor to, in effect, negate the filing of a map under the Map Act.
>
> . . .
>
> The function and purpose of the County Assessor is to raise revenue and *not* to regulate the division of land. . . . A County Assessor will quite often combine or renumber parcels for valid reasons entirely separate from the purposes of the Subdivision Map Act. (citations omitted)

59 Cal. Op. Att'y Gen. 581, 583 (1976) (cited in Appendix B to Smith Petition, p. 32 n 3.) (assessor's records showed only one lot where recorded subdivision map showed three).

The rationale for this rule is obvious:

> If the administrative action of an assessor could be relied upon by a landowner in the circumstances under consideration, it could be argued that a proper "division" by the owner and its attendant submission of a map and approval by the proper local agency would be unnecessary to sell one of the areas given a separate parcel number by the assessor. Such an

> occurrence, however, would remove local planning control over the development of the property and thereby frustrate the very purposes of the Act.

62 Cal. Op. Att'y Gen. 147, 149 (1979) (assessor's records showed two separate parcels where recorded subdivision map showed only one).

In the present action, the assessor's maps showed various separate roadway parcels which were not shown as separate lots on the recorded subdivision map. Both generally and in this case, assessors' records simply cannot be relied on to determine Subdivision Map Act issues. The state courts' reasonable refusal to rely on such records in this case did not deny Smith due process.

Smith's further argument that the state courts created uncertainty as to deeds referencing subdivision maps is equally meritless. California Government Code Section 66499.32 allows a seller to comply with the Act by simply referencing a recorded subdivision map. Smith did not avail himself of that safe haven; his deeds to the Roulette Plaintiffs did not merely reference the applicable recorded map, but went on to specifically *exclude* the roadways from the lots. (Appendix B to Smith Petition, pp. 39-40.) Given those facts, this case does not create any unconstitutional uncertainty as to the application of Section 66499.32.

C. THE STATE COURTS DID NOT DENY SMITH DUE PROCESS BY UTILIZING THE SUMMARY JUDGMENT PROCEDURE

Finally, Smith argues that he was denied due process because the Roulette Plaintiffs were granted summary

judgment. A California state trial court may grant summary judgment where it determines that "there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Cal. Civ. Pro. Code § 437c(a).[7]

> Section 437c is purely a procedural statute, doubtless designed to protect the rights of the plaintiff, in actions of the character specified in the statute, from the harassing delays that ordinarily accompany evasive, spurious, and meritless defenses. It likewise promotes and protects the administration of justice, . . .

Bank of America v. Oil Well Supply Co., 12 Cal. App. 2d 265, 55 P. 2d 885, 888 (1936). The summary judgment procedure has been upheld by this Court against constitutional challenges. *See e.g., Fidelity & Dep. Co. v. United States*, 187 U.S. 315 (1902). There is nothing for a jury to decide where the evidence is "so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

In the present action, Smith points to nothing in the record that even raises an inference that this common procedure was applied in such a way as to deny him "due process." The state courts determined that there were no issues of fact raised by Smith below and that the case could be decided as a matter of law. That determination, based on the particular facts of this case and the state

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[7] This language is almost identical to that in Federal Rule of Procedure 56(c); substantively the standard for granting summary judgment is the same in the two rules.

courts' application of state law and procedure, is not one which this Court should review.

III. THIS CASE IS OF NO NATIONAL INTEREST OR IMPORTANCE, AND DOES NOT CREATE ANY CONFLICT TO BE RESOLVED BY THIS COURT

This action involves California residents, statutes, public policies, and real property. The principles involved are longstanding and well recognized. The decision below turned on the unique facts of this suit. Because the Court of Appeal opinion was not published, it is improper for that decision to be cited or relied upon as precedent in other state actions. California Rule of Court 977. The decision appealed from therefore does not even have precedential value in California, let alone other jurisdictions. There is no conflict between the state court decision in this case and any decisions of this court or of any federal Court of Appeals. In sum, there is simply no reason why this Court should have any interest whatsoever in this case.

CONCLUSION

This Court has no jurisdiction to review the state court judgment in this action. Smith's purported "federal question" is raised for the first time in this Court. The state court judgment is based on application of long-established, well-reasoned California law and precedent. The application of those principles in the present action in no way denied Smith due process under the federal Constitution. There is no conflict with federal decisions to

be resolved. This case has no national import or interest. In fact, Smith's Petition is so frivolous that the Roulette Plaintiffs respectfully request that such petition not only be denied by this Court, but also that the Roulette Plaintiffs be awarded double attorneys' fees and costs incurred, pursuant to this Court's Rule 42.2.

Dated: October 20, 1993

Respectfully submitted,

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